Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
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NO. 87-210

IN THE SUPREME COURT

OF THE UNITED STATES

OCTOBER TERM, 1987

JOHN L. PRICE,

Petitioner,

-v-

PATRICK WARNECKE,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

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August, 1987
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QUESTION PRESENTED

Whether or not the Petitioner stated a claim for relief or established a set of facts that could be shown to prove a deliberate indifference to a serious medical need to show a violation of the Eighth Amendment to the United States Constitution in order to state a claim for relief under 42 U.S.C. Section 1983.

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STATEMENT OF THE CASE

The Petitioner's statement of the case and the issue presented to this Court is in error and purposely tries to divert the Court from the real issue that was presented to the appellate court. Throughout this litigation, the Petitioner has tried to focus on what he views as judicial malfeasance by the judges of the Ninth Circuit Court of Appeals without really focusing on the issue of whether or not his action could survive the motion for summary judgment in the district court.

In 1981, the Petitioner was an inmate at the Montana State Prison, Deer Lodge, Montana. On September 23, 1981, the Petitioner filed a pro se complaint with the United States District Court in Butte, Montana, claiming a violation of his civil rights as indicated under 42 U.S.C.

Section 1983. The three main defendants in the district court action were W. Patrick Warnecke, then the associate warden of treatment, Beverly Beck, the head nurse at the Prison infirmary, and Henry Risley, the Warden of the Montana State Prison. Warden Risley was later dismissed by the district court with the Petitioner's consent because he was not even employed at the Prison when the alleged conduct occurred. The pro se complaint for relief asked for monetary damages, injunctive relief and declaratory relief involving dental care at the State Prison. The parties both moved for summary judgment and the Defendants prevailed on their motion for summary judgment.

The magistrate found from the pleadings and discovery that there was not a deliberate indifference on

behalf of the Defendants to warrant a trial because there had been no violation of the Eighth Amendment. A de novo review by the United States District Judge resulted in the motion for summary judgment being granted and judgment entered in favor of the Defendants. An appeal to the Ninth Circuit Court of Appeals, unreported opinion of May 3, 1986, upheld the granting of the summary judgment in favor of the Defendants. A long and torturous letter writing and pleading campaign by the Petitioner occurred which has now finally resulted in a petition for certiorari to this Court.

REASONS FOR DENYING THE WRIT

A. The case does not merit review.

This case really involves only one narrow issue: Did the Petitioner ever show a series of facts that

showed a deliberate indifference to a serious or legitimate medical need? This Court has already clearly resolved the issue of medical treatment for inmates in the case of Estelle v. Gamble, 429 U.S. 97, 97 S. Ct. 285 (1976). The Court has held that, in order to state a cause of action under Section 42 U.S.C. Section 1983, the Plaintiff must show that the prison officials were deliberately indifferent to a legitimate, serious medical need. The case clearly establishes that, as long as prison officials do not ignore a legitimate medical need, there is no violation of the Eighth Amendment and, therefore, a complaint under the federal Civil Rights Act cannot stand.

A mere difference of opinion between the inmate and prison officials is not sufficient to state a

claim under Section 1983. Franklin v. Oregon, 662 F.2d 1337, 1344 (9th Cir. 1981); Ferranti v. Morgan, 618 F.2d 888 (1st Cir. 1980); McCracken v. Jones, 562 F.2d 22 (10th Cir. 1977) cert. den. 435 U.S. 1917 (1978); Seward v. Hutto, 525 F.2d 1024 (8th Cir. 1975).

Although Estelle involved a medical condition, the Supreme Court's holding has been extended to dental care as well. Finney v. Arkansas Board of Corrections, 505 F.2d 195, 202, (8th Cir. 1974).

B. The decision below does not conflict with any federal court decision.

There are many reported cases that are the result of Estelle, each construing a set of facts of whether or not a deliberate indifference violation has been stated. The Petitioner does not cite a single conflict regarding the real issue

presented here. Every court to consider the question has held that, unless there is a deliberate indifference to a serious medical need by the prison officials, there is no violation of the Eighth Amendment. There is simply no conflict in the circuits on this issue.

C. The decision below is correct.

The task that an inmate has when attempting to file suit under 42 U.S.C. Section 1983 on medical or dental issues is to demonstrate a set of facts that show a deliberate indifference to a serious medical need. Without exception, every court that has reviewed this issue has held that, absent these facts, the complaint should be dismissed. E.g., Kelsey v. Ewing, 652 F.2d 4 (8th Cir. 1981); Mullen v. Smith, 738 F.2d 317 (8th Cir. 1984); Toombs v. Bell, 798

F.2d 297 (8th Cir. 1986).

When it was obvious that the pleadings and the discovery showed that there was not a deliberate indifference to the Petitioner's dental needs, then the matter was ripe for summary judgment. The granting of summary judgment in favor of the Defendants was correct and the Circuit Court clearly recognized that in its decision.

CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari should be denied.

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